

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

MELISSA WINTERHALTER,

Plaintiff,

vs.

Case No. 2006-3438-DM

DAVID WINTERHALTER,

Defendant.

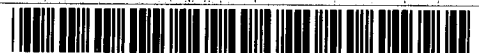
OPINION AND ORDER

This *Opinion and Order* is in response to Plaintiff's undated letter received by the Court. Plaintiff has requested relief without filing a motion.

MCR 2.119 governs the rules concerning motion practice. MCR 2.119(A)(1) provides that "[a]n application to the court for an order in a pending action must be by motion. Unless made during a hearing or trial, a motion must (a) be in writing, (b) state with particularity the grounds and authority on which it is based, (c) state the relief or order sought, and (d) be signed by the party or attorney as provided in MCR 2.114." MCR 2.119(C)(1) requires all motions and a notice of hearing to be served upon the opposing party at least 9 days before the time set for the hearing, if served by mail, or at least 7 days before the time set for the hearing, if served by delivery under MCR 2.107(C)(1) or (2). MCR 2.119(G) provides that a motion fee must be paid on the filing of any request for an order in a pending action.

In the case at hand, Plaintiff failed to follow any of the rules cited above. Since Plaintiff failed to serve opposing counsel, her letter is an ex parte communication to this Court. Canon 3 of the Michigan Code of Judicial Conduct provides in pertinent part:

(4) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the



parties concerning a pending or impending proceeding, except as follows:

- (a) A judge may allow ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits, provided:
 - (i) the judge reasonably believes that no party or counsel for a party will gain a procedural or tactical advantage as a result of the ex parte communication, and
 - (ii) the judge makes provision promptly to notify all other parties and counsel for parties of the substance of the ex parte communication and allows an opportunity to respond.

* * *

- (b) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.
- (c) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

In accordance with Canon 3 of the Michigan Code of Judicial Conduct, the Court will not consider the issues addressed in Plaintiff's letter. The Court advises Plaintiff to follow all applicable Michigan Court Rules and refrain from ex parte communications. Plaintiff is further advised to file a motion in accordance with MCR 2.119 for any requests to have an order entered in this action.

In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

MARK S. SWITALSKI

Mark S. Switalski, Circuit Judge

Dated: August 2, 2006

MSS/vs

CC: Melissa Winterhalter, Attorney at Law
Ezra N. Goldman, Attorney at Law

A TRUE COPY

Carmella Schough

BY

